

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRYAN ANGLE, II, Plaintiff)
v.) C.A. No. 22-33 Erie
LT. SMITH, et al., Defendants)
District Judge Susan Paradise Baxter
Magistrate Judge Richard A. Lanzillo

MEMORANDUM ORDER

Plaintiff Bryan Angle, II, an inmate incarcerated at the State Correctional Institution at Fayette in LaBelle, Pennsylvania, originally filed this *pro se* civil rights action in the Court of Common Pleas of Erie County, Pennsylvania, against seventeen (17) corrections officers employed at SCI-Fayette. The action was removed to this Court by Notice of Removal filed by Defendants on January 31, 2022 [ECF No. 1] and was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

In his *pro se* complaint, Plaintiff asserts violations of his federal constitutional rights pursuant to 42 U.S.C. § 1983, violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc, et seq., and state law torts of conversion and assault and battery. Defendants filed a motion to dismiss Plaintiff's complaint for failure to state a claim upon which relief may be granted [ECF No. 5].

On June 10, 2022, Magistrate Judge Lanzillo issued a report and recommendation ("R&R"), recommending that Defendants' motion to dismiss be granted in part and denied in

part [ECF No. 19]. Specifically, Judge Lanzillo has recommended that Defendants' motion be denied as to Plaintiff's excessive use of force, assault, battery, and retaliation claims against Defendant Guyton, and that Defendants' motion be granted as to all other claims, as follows: Plaintiff's due process claims for confiscation of his property and his claims of verbal harassment be dismissed with prejudice; and Plaintiff's free exercise of religion and RLUIPA claims, his possible access to courts claim, and his excessive use of force, assault, battery, and retaliation claims against all Defendants other than Defendant Guyton, be dismissed, without prejudice to Plaintiff's right to amend his complaint to more fully state such claims. No timely objections to the R&R have been filed.

After *de novo* review of the relevant documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 29th day of June, 2022;

IT IS HEREBY ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued June 10, 2022 [ECF No. 19], is adopted as the opinion of the Court, and Defendants' motion to dismiss [ECF No. 5] is granted in part and denied in part as follows: Defendants' motion is DENIED as to Plaintiff's excessive use of force, assault, battery, and retaliation claims against Defendant Guyton; Defendants' motion is GRANTED as to Plaintiff's due process claims for confiscation of his property and his claims of verbal harassment, and such claims are DISMISSED, with prejudice; and Defendants' motion is GRANTED as to Plaintiff's free exercise of religion and RLUIPA claims and his possible access to courts claim against all Defendants, as well as his excessive use of force, assault, battery, and retaliation claims against all Defendants other than Defendant Guyton, and such claims are DISMISSED, without

prejudice to Plaintiff's right to amend his complaint to more fully state such claims in accordance with the parameters outlined in the R&R. If he desires to do so, Plaintiff must file his amended complaint within thirty (30) days of the date of this Order. Plaintiff's failure to file an amendment within such time shall result in dismissal, with prejudice, of all claims, other than Plaintiff's excessive use of force, assault, battery, and retaliation claims against Defendant Guyton, without further notice.



SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge

all parties of record